U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF J-A-K-T-

DATE: AUG. 4, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a nephrology fellow at the time of filing, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is normally attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director, Texas Service Center, denied the petition. The Director found that the Petitioner established her eligibility as an advanced degree professional, but did not show that a waiver of the job offer requirement is in the national interest. Specifically the Director concluded that the Petitioner had not demonstrated the necessary influence in the field.

The matter is now before us on appeal. In her appeal, the Petitioner notes that she not only performs clinical duties as a physician, but also performs research.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate his or her qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required to confirm that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –

> (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
>
> (B) Waiver of Job Offer –
>
> > (i) Subject to clause (ii), the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.[1]

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Matter of New York State Dep't of Transp., 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must demonstrate that the national interest would be adversely affected if a labor certification were required by confirming that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner's assurance that he or she will, in the future, serve the national interest cannot suffice to confirm prospective national benefit. *Id.* at 219. Rather, a petitioner must justify projections of future benefit to the national interest by establishing a history of demonstrable achievement with some degree of influence on the field as a whole. *Id.* at 219, n.6.

---

[1] Pursuant to section 1517 of the Homeland Security Act of 2002 ("HSA"), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA "shall be deemed to refer to the Secretary" of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

II. ANALYSIS

The Petitioner obtained a doctor of medicine degree from the [redacted] in the Philippines. She seeks to continue her work as a clinical and research physician specializing in nephrology. Accordingly, the Petitioner is an advanced degree professional. 8 C.F.R. § 204.5(k)(2) (definitions of advanced degree and profession).

At the time of filing, the Petitioner's two main areas of research in nephrology included analysis of her employer's telemedicine program for veterans and desensitization protocols for renal transplants. Subsequently, the Petitioner reviewed the literature relating to the clinical care of pregnant women undergoing peritoneal dialysis and began investigating the gastrointestinal effects of curcumin in diabetic patients.

The Director acknowledged that the Petitioner worked in an area of intrinsic merit and that the proposed benefits of her research, improving treatments for individuals with renal conditions, would be national in scope. At issue is whether the Petitioner has shown the necessary track record and influence to verify that it is in the national interest to waive the job offer requirement.

On appeal, the Petitioner notes that research is not an expected or necessary duty of a physician. While true, the Petitioner's involvement in research forms the foundation of our conclusion that the proposed benefits of her work are national in scope. The fact that she is engaged in research, however, does not resolve the extent of her influence in the field. On this point, the Petitioner provided several letters, published scholarly articles, conference presentations, a small number of citations, and letters of appreciation for reviewing manuscripts.

Prior to focusing on nephrology, the Petitioner authored a case report chronicling the diagnosis of a patient with Mitochondrial Encephalopathy Lactic Acidosis and Stroke-Like Episodes (MELAS). The first author of the article, [redacted] of the [redacted] confirms that the Petitioner was "a significant contributor and co-author" of the study, administering care to the patient, analyzing data, and writing the manuscript. [redacted] concludes that the study "has proven valuable in the medical community, as MELAS is a rare but debilitating disease in need of more awareness, to ensure proper diagnosis in the future." The Petitioner documented that the case study garnered two citations. On appeal, the Petitioner notes that clinical research can have practical applications that are not typically reflected by citations in research articles. While the Petitioner's point is a valid one, it remains the Petitioner's burden to show a degree of influence beyond her immediate circle of colleagues. The record does not contain letters from independent clinicians explaining how they have incorporated her study into their institution's diagnostic guidelines or otherwise applied it in diagnosing or treating MELAS patients.

Most of the letters focus on the Petitioner's analysis of the telemedicine program at the [redacted] in the [redacted] New York. The center shares medical staff with [redacted] in New York, where the Petitioner completed her fellowship. According to the appeal brief, the Petitioner "developed and implemented a

telenephrology program" at The record does not support this statement. an associate professor at the hospital and an attending physician at the explains that, in April 2011, the center began employing videoconferencing technology to evaluate renal patients remotely in the He continues that the Petitioner, who joined in 2013, compiled and analyzed the data showing that this program reduced the rate of cancellations and missed appointments, saved gas expenses for patients, and slowed the rate of renal disease progression. As such, the Petitioner reviewed an existing program rather than developing and implementing one. an associate professor at and chief of the nephrology division at affirms that the Petitioner's "analysis of our telenephrology program has been critical to assessing this innovative program, which has provided remote clinical evaluations for nearly 100 unique patients with chronic kidney disease." Neither nor offers examples of other veterans or general clinics that have reviewed the Petitioner's evaluation in planning their own telemedicine program.

The Petitioner did supply letters from practitioners in her specialty at independent institutions. None of these letters, however, identify an independent medical facility that has benefited from or otherwise reviewed the Petitioner's analysis of one telemedicine program. chief of the neurology division at the affirms that the Petitioner's research "is paving the way for the expanded implementation of the program for the treatment of other renal conditions, including serving veterans on hemodialysis and peritoneal dialysis." While he concludes that this study is critical to improving treatment and laying the groundwork for improved clinical practices, he does not list any examples of facilities that are reviewing the Petitioner's results when designing or implementing their own program.

chief of the nephrology section at the states that the Petitioner's study "has been especially impactful in the area." While he further notes that her work is "applicable across the health care industry," and declares that it is "foundational to the implementation of telemedical programs nationwide and internationally," he offers no examples where the Petitioner's data formed the basis of another program beyond chief of the division of general internal medicine at the expresses his enthusiasm about the Petitioner's work, acknowledging that it is "in line with previous research verifying the benefits of telemedicine for helping patients requiring psychiatric, radiological, and obstetrics care."

The letters confirm the importance and value of telemedicine, especially for veterans. Eligibility for the waiver, however, must rest with the Petitioner's own qualifications rather than with the position sought. *See NYSDOT*, 22 I&N Dec. at 218. It remains that the letters do not identify how the Petitioner's analysis of an existing program has influenced the use of telemedicine programs beyond her employer. In response to the Director's request for evidence (RFE), the Petitioner's cover letter affirmed that the testimony demonstrated that she is "currently leading [the movement of the to develop improved telemedicine techniques to treat veterans across the country." The letter noted she was providing documents that substantiate the importance of telemedicine to the and the "direct impact of [the Petitioner's] work on expanding telehealth

services throughout the system." The submitted materials show that other institutions, including facilities, are pursuing telemedicine studies, and that the and offer clinical video telehealth. These items, while establishing the use of telemedicine options at multiple facilities, do not corroborate that the Petitioner has influenced telehealth beyond her employer. They do not name the Petitioner, her study, or the results generally at as the basis of implementing programs at other locations.

and also discuss the Petitioner's research relating to renal transplants. Specifically, explains that the Petitioner "has been performing a meta-analysis of studies in the literature that describe various techniques for inducing desensitization to foreign tissue." According to the large number of individuals awaiting a kidney donation exemplifies the need for "a uniform protocol that can ensure kidney transplants are tolerated by patients' bodies with high success rates." offers a similar summary of the Petitioner's research in this area, concluding that it has "been crucial to overhauling the kidney transplantation process." He does not, however, provide examples of overhauls to the kidney transplant process and the Petitioner's contributions to those improvements. USCIS need not accept primarily conclusory statements. *See 1756, Inc. v. The Att'y Gen. of the U.S.*, 745 F. Supp. 9, 15 (D.C.D. 1990).

In response to the Director's RFE, the Petitioner supplied a letter from consultant and chair of general internal medicine, who confirms that the Petitioner completed "an unprecedented comprehensive and detailed review of literature related to clinical care of pregnant women undergoing peritoneal dialysis" that is pending publication. Also, decribed the Petitioner's assessment of curcumin on diabetic nephropathy. He concludes that these findings "are certain to yield highly valuable information that will aid the treatment of these afflictions." does not indicate that these studies have already had an influence in nephrology.

Finally, the Petitioner provided correspondence corroborating her review of manuscripts, but did not show that this evidence is indicative of her influence in the field. While the record includes expressions of appreciation confirming that she participated in the process used by peer-reviewed scientific journals, they do not substantiate an influence in the field of nephrology as a whole.

In summary, the Petitioner has participated in studies on valuable and important subjects, but the submitted letters do not explain how her results have been or are in the process of being used beyond her employer, nor does the record include other documentation demonstrating such use of her work. While the lack of a notable level of citations does not preclude eligibility, here the Petitioner has not provided sufficient evidence to document an influence on the field as a whole.

III. CONCLUSION

The burden is on the Petitioner to show eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The Petitioner in this case has not established by a preponderance of the evidence that her past record of achievement

is at a level sufficient to waive the job offer requirement which, by law, normally attaches to the visa classification sought by the Petitioner. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of J-A-K-T-*, ID# 17663 (AAO Aug. 4, 2016)